



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2019–0091; FXES11140100000–190–FF01E00000]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of Applications for Incidental Take Permits; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service), announce the availability of a habitat conservation plan (HCP) in support of incidental take permit (ITP) applications received from the Deschutes Basin Board of Control (DBBC), on behalf of its eight member irrigation districts, and the City of Prineville (applicants). The eight irrigation districts that make up the DBBC are Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo. The

applicants have submitted applications for ITPs to both the Service and the National Marine Fisheries Service for the species under each agency's jurisdiction. Applicants are seeking authorization for the incidental take of five species that is expected to result from the storage, release, diversion, and return of irrigation water by the DBBC member districts and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville. Also available for review is the Service's draft environmental impact statement (DEIS), which was prepared, pursuant to NEPA, in response to the applications. We are seeking public comments on the HCP and DEIS.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments submitted online at <https://www.regulations.gov/> (see ADDRESSES) must be received by 11:59 p.m. Eastern Time on [INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Public Meetings: The Service will host two open house public meetings at the following times during the public comment and review period:

- Bend, OR: Tuesday, October 15, 2019, from 6 to 8 p.m.
- Prineville, OR: Wednesday, October 16, 2019, from 6 to 8 p.m.

ADDRESSES: *Obtaining Documents for Review:* The documents this notice announces, as well as any comments and other material that we receive, will be available for public inspection online in **Docket No. FWS-R1-ES-2019-0091** at <http://www.regulations.gov/>. Documents will also be available at <https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716>.

Submitting Comments: You may submit comments by the following methods:

- *Online:* <http://www.regulations.gov>. Follow instructions for submitting comments on Docket No. FWS–R1–ES–2019–0091.
- *Public meetings:* A computer will be available at the public meetings to allow attendees to submit comments. The meetings will be held at the following locations:
 - Mount Bachelor Village Resort & Event Center, 19717 Mt Bachelor Drive, Bend, OR 97702.
 - Carey Foster Hall, Crook County Fairgrounds, 1280 Main Street, Prineville, OR 97754.
- *Hard copy:* Submit by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS–R1–ES–2019–0091; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/1N; Falls Church, VA 22041–3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post online any personal information that you provide (see **Public Availability of Comments** under **SUPPLEMENTARY INFORMATION**). We request that you submit comments by only the methods described above.

Reviewing U.S. Environmental Protection Agency (EPA) comments on the draft HCP and DEIS: See **EPA’s Role in the EIS Process** under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Bridget Moran, by telephone at 541–383–7146, or by email at bridget_moran@fws.gov. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) received incidental take permit (ITP) applications on August 30, 2019, from the Deschutes Basin Board of Control (DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts) and the City of Prineville (applicants) in accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants prepared the draft Deschutes Basin habitat conservation plan (HCP) in support of the ITP applications and are seeking authorization for take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and bull trout (*Salvelinus confluentus*) from the Service, and take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed Middle Columbia River spring Chinook salmon (*Oncorhynchus tshawytscha*) and sockeye salmon (*O. nerka*) from the NMFS. Hereafter, these five species are collectively referred to as the “covered species.”

The ITPs, if issued, would authorize take of the covered species that may occur incidental to the storage, release, diversion, and return of irrigation water by the DBBC member districts, and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville (the covered activities).

The HCP specifies the impacts that will likely result from the taking of covered species and describes the steps the applicants will take to minimize and mitigate such impacts. The HCP also discusses alternative actions to the taking that were considered by the applicants and the reasons why such alternatives are not being utilized. The HCP

also describes the covered species' life history and ecology, as well as biological goals and objectives of the HCP, adaptive management, monitoring, and funding assurances.

The Service prepared a draft environmental impact statement (DEIS) in response to the ITP applications in accordance with the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We are making the HCP and DEIS available for public review and comment.

Background

All eight water districts are quasi-municipal corporations formed and operated according to Oregon State law to distribute water to irrigators (patrons) within designated geographic boundaries and in accordance with the individual water rights held by those patrons. The City of Prineville operates City-owned infrastructure and provides essential services—including public safety, municipal water supply, and sewage treatment—for more than 9,000 residents. The applicants have determined that continued operation of irrigation and essential services requires ITPs to address unavoidable take of listed species, which is ongoing.

The applicants have proposed a conservation program to avoid, minimize, and mitigate for impacts to the covered species. The HCP addresses the negative effects of the covered activities on the covered species by reducing or eliminating those effects to the maximum extent practicable, and by mitigating effects that cannot be eliminated altogether. In general, negative effects on listed species can result from direct harm or injury of individuals of the species, and through changes in habitat that interfere with the essential life activities of the species. Both types of effects are addressed in the HCP

conservation measures. The covered activities affect the covered species primarily through changes in the hydrology (flow) of occupied waters associated with the storage, release, diversion, and return of irrigation water.

In the course of storing, releasing, diverting, and returning irrigation water, the applicants alter the hydrology of the Deschutes River and a number of its tributaries. In a similar fashion, the pumping of groundwater for municipal water supply by the City of Prineville affects the hydrology in one of those tributaries, the Crooked River. These changes in hydrology alter habitat conditions for the three species protected under the ESA, thereby creating the potential for incidental take of the species.

The activities covered by the HCP cause changes in surface water hydrology that alter the quantity and/or quality of aquatic habitats for the listed species. The covered activities modify the timing and magnitude of flow in the Deschutes River and a number of its tributaries through the storage, release, diversion, and return of irrigation water. In most cases, the hydrologic changes resulting from irrigation activities have negative impacts on aquatic habitats for the covered species. When flows are reduced, the total area of usable habitat for aquatic species generally decreases and water temperatures typically increase to the extent that habitat quality is negatively impacted. The HCP's conservation measures will modify irrigation activities that reduce instream flow (storage and diversion of water) to address the negative effects. As a result, flows in the affected reaches will be higher than they were historically (over the last 50+ years) in the winter, and water temperatures (particularly peak summer temperatures) will be lower.

The applicants have continued to refine the HCP based on technical assistance from the Service and NMFS. The applicants recognize this continued assistance in their

transmittal memo provided with the ITP applications, and note that they are considering certain additional measures analyzed in the DEIS (under Alternatives 3 and 4) that are not currently reflected in the proposed HCP, including the concept of a habitat improvement fund for projects in the Upper Deschutes, and the possibility of increasing winter flows below Wickiup Dam. The applicants may choose to incorporate these and/or additional elements analyzed in the DEIS into their HCP. Further discussions are also needed about the permit structure itself, including what happens if one or more permittees decide to relinquish their permit coverage. The Service and NMFS anticipate addressing these remaining issues after the public has had the opportunity to review and comment on both the HCP and the DEIS.

Proposed Action

We propose to issue a 30-year permit for incidental take of the Oregon spotted frog and bull trout if the HCP meets all section 10(a)(1)(B) permit issuance criteria. The permit would authorize take of these two covered species incidental to the storage, release, diversion, and return of irrigation water by the DBBC member districts and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville. NMFS will make an independent decision regarding coverage for incidental take of the three species under its jurisdiction.

Endangered Species Act

Section 9 of the ESA and its implementing regulations prohibit “take” of fish and wildlife species listed as endangered (16 U.S.C. 1538(a)(1)). In addition, section 4 of the

ESA allows the Service and NMFS to issue regulations that prohibit the take of any fish and wildlife species listed as threatened (16 U.S.C. 1533(d)). Take prohibition has been extended, in whole or in part, to the three covered species that are listed as threatened. Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1538). Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the HCP will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a DEIS, in which we analyze the proposed action and a reasonable range of alternatives to the proposed action. Four alternatives are analyzed in the DEIS.

Alternative 1 - No-action Alternative: No permit would be issued, and the applicant's HCP would not be implemented. Under Alternative 1, ongoing applicant activities would remain subject to take prohibition for listed species under the ESA. Ongoing applicant activities or future actions that may result in incidental take of federally listed species would need to be authorized through separate ITP applications submitted by each applicant under ESA section 10. This alternative assumes continuation of the actions covered in the current ESA section 7 biological opinion for the Upper Deschutes River to address take of the Oregon spotted frog, and of the actions covered in the current Service and NMFS ESA section 7 consultation documents for the Deschutes River Basin Projects to address effects to the Middle Columbia River steelhead trout and bull trout, as well as other predictable current and future conditions.

Alternative 2 - Proposed Action, Deschutes Basin HCP: Under this alternative, the Service and NMFS would issue 30-year ITPs to the applicants for incidental take of covered species caused by covered activities in the plan area, and the applicants would implement the HCP. The HCP's conservation strategy modifies the timing and magnitude of the storage, release, and diversion of irrigation water. Over the 30-year period, flows are modified to mimic more natural hydrography to support the various life stages of the covered species.

Alternative 3 - Enhanced Variable Streamflows: Under this alternative, the Service and NMFS would issue ITPs to the applicants for the same plan area, covered

lands and waters, covered species, covered activities, and permit term as described for the proposed action, but with modifications to the HCP conservation strategy including increased fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of uncontracted water releases on the Crooked River for fish and wildlife, and the inclusion of a habitat improvement fund for projects in the Upper Deschutes.

Alternative 4 - Accelerated Schedule for Enhanced Variable Streamflows: Under this alternative, the Service and NMFS would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, and covered activities as described for the proposed action, but with a 20-year permit term and modifications to the HCP conservation strategy for an accelerated schedule for increases in fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of additional uncontracted water releases on the Crooked River for fish and wildlife, and the habitat improvement fund for projects in the Upper Deschutes.

The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs. Therefore, EPA is publishing a notice in the *Federal Register* announcing this EIS, as required under section 309 of the Clean Air Act. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA's notices are published on Fridays.

EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. All EISs must be filed with EPA. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Public Comments

You may submit your comments and materials by one of the methods in

ADDRESSES. We specifically request information on the following:

1. Potential impacts to the human environment that may occur during the permit term;
2. Biological information and relevant data concerning the covered species and other wildlife;
3. Potential direct, indirect, and cumulative impacts that implementation of the proposed HCP's mitigation/minimization measures could have on the covered species, other endangered or threatened species, associated ecological communities or habitats for such species, and other aspects of the human environment;
4. Whether there are additional connected, similar, or reasonably foreseeable cumulative actions and their possible impacts on the human environment, including, without limitation, Oregon spotted frog, bull trout, Mid-Columbia steelhead, chinook salmon, and sockeye salmon, all of which were not identified in the DEIS;

5. The identification and evaluation of archaeological and historic resources that the proposed project may affect;
6. Other possible reasonable alternatives to the proposed permit action that the Service should consider, including additional or alternative avoidance, minimization, and mitigation measures; and
7. Other information relevant to the proposed HCP and impacts to the human environment.

Public Availability of Comments

We will post on <http://regulations.gov> all public comments and information received electronically. All comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Service's Bend Field Office, using one of the

methods listed in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meetings. Information regarding this proposed action is available in alternative formats upon request.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 et seq.) and NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6).

Robyn Thorson,

Regional Director,

U.S. Fish and Wildlife Service.

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